

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency

P.O. Box 2415

Washington, DC 20013-2415

Notice FC-48

2045-BB and 1900-D

For: State and County Offices

Conflict of Interest in Employee Business Relationships

Approved by: Acting Deputy Administrator, Farm Credit Programs



1 Overview

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Background

Notice FC-12 required each State to survey STC and COC members, and employees for business relationships, investments, managerial roles, cosigned loans, and loans with close relatives.

Each SED was to examine the survey to identify possible conflicts of interest or potential conflicts of interest and report certain relationships to the Administrator.

B

Purpose

This notice provides guidance on business relationships that create conflicts of interest or have the appearance of a conflict of interest.

Disposal Date

May 1, 1997

Distribution

State Offices; State Offices relay to County Offices and Ag Credit Teams

Notice FC-48

2 Resolving FSA Employees' Conflicts of Interest in Business Relationships

A Leasing Farms to FSA Borrowers

Section 2045.1355(i) of FmHA Instruction 2045-BB prohibits business activity between borrowers and **employees**, and section 2045.1355(i)(2)(v), specifically prohibits **employees** from leasing real estate to borrowers. State and County Offices were notified of this restriction in Notice FC-12. Section 2045.1355(i) does **not** apply to COC members.

- If a lease was in effect before December 26, 1995, it is permissible to allow the lease for the balance of this operating year. Employees need to cancel the lease for subsequent years. If the cancellation would create an extreme hardship for an FSA borrower, submit the information to the National Office through Area Office on a case-by-case basis for further guidance.
 - If a lease was not in effect before December 26, 1995, and the employee entered into a lease after that date, SED's will resolve these situations according to FmHA Instruction 2045-BB, Exhibit B VI.
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B Other Business or Personal Relationships

FSA employees cannot enter into, or try to enter into, business or personal relationships with FSA applicants, borrowers, or business contacts. See section 2045.1355(i)(5) for general exceptions. Each employee must examine the employment, activity, and financial interest of their family members. These activities are the same as if done by the employee. The FSA duties are crucial in the determination of conflict of interest. The following are some examples of prohibited business or personal relationships.

- Purchasing real or personal property mortgaged or pledged to the Government through FSA. See section 2045.1355(i)(2)(i).
 - Hiring an applicant, borrower, or business contact for the benefit of the employee or the employee's family member; or being hired by an applicant, borrower, or business contact. See section 2045.1355(i)(2)(ii).
 - Leasing a farm from an FSA applicant, borrower, or business contact for the benefit of the employee's family member. See section 2045.1355(i)(2)(iv).
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2 Resolving FSA Employees' Conflicts of Interest in Business Relationships (Continued)

B

**Other Business
or Personal
Relationships
(Continued)**

- Selling, knowingly or unknowingly, directly or indirectly, personal real estate. Exceptions can be granted according to FmHA Instruction 2045-BB, section 2045.1355(g)(2) and (g)(4).
 - Entering into any long-term contractual business relationship with an applicant, borrower, or business contact. There are no exceptions for this provision. Generally, long-term is defined as exceeding 1 calendar year. This provision cannot be circumvented with a series of 1 year agreements or contracts. See section 2045.1355(i)(2)(vi) and (i)(4).
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3 Resolving SED, STC, and COC Business Relationships With Borrowers and Applicants

A

Leasing Farms

If SED's and STC members have leased real estate to FSA borrowers or applicants, they need to begin phasing out the lease relationship with the borrower. They can complete the lease for the current operating cycle.

Although COC members are not specifically prohibited by section 2045.1355(i) from leasing real estate to FSA borrowers or applicants, such leases should be discouraged to avoid questions being raised about the COC member's objectivity.

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**Selling Personal
Real Estate**

Generally, personal real estate will not be sold to FSA borrowers or applicants. Exceptions can be made for STC members with Administrator approval and COC members with SED approval according to FmHA Instruction 2045-BB, section 2045.1355(g)(4).

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3 Resolving SED, STC, and COC Business Relationships With Borrowers and Applicants (Continued)

C

Actions with Potential Conflicts

SED, STC, or COC members acting in official capacities shall not sign a program document or participate in any decision or meeting involving an FSA borrower or potential borrower where a business or family relationship exists.

For example, if SED, STC, or COC member:

- owns stock in a bank or is a member of the board of directors of a bank that makes FSA guaranteed loans
- has a spouse who is a loan officer at a bank that makes FSA guaranteed loans
- has a close relative who is a member of the board of directors in a bank that makes FSA guaranteed loans
- is a close relative of the FSA applicant or borrower
- is a licensed realtor and the realty company where the member is employed is selling property to an FSA borrower or applicant
- owns or operates a crop dusting service, seed business, fertilizer business, or similar enterprise and the customer is an FSA applicant or borrower
- is an auctioneer and has been conducting business with an FSA applicant or borrower.

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Contact

If there are questions regarding this notice, contact Jerry Wishall, LSPMD, through the Area Office.
